

DEALER PAPER

OVERVIEW

Indirect paper, purchased from a dealer by a financial institution, should be reviewed to ensure compliance with the applicable laws and regulations. The loans should be \$25,000 or less and primarily for personal, family, or household purposes.

Examination Objective(s)

The examination objective is to determine:

- Whether purchased dealer paper is in compliance with applicable laws and regulations

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DEFINITION(S)

A person or entity to whom a right or property is legally transferred.

Assignee

DEFINITION(S)
(cont'd)

An entity in the business of selling goods or property and financing the purchase of those goods or property.

Dealer

**TRUTH IN
LENDING (TIL)**

A financial institution is not the creditor when purchasing dealer paper, but is the assignee, and therefore is liable for ensuring disclosures are correct apparent from information on the face of the disclosure.

(Section 131 of the TILA)

Truth In Lending (TIL)	
1.	Determine that the disclosures are grouped together, segregated from other material, and made clearly and conspicuously in writing in a form the consumer may keep. (226.17(a)(1))
2.	Determine that the terms "finance charge" and "annual percentage rate", when required to be disclosed with a corresponding amount or percentage rate, are more conspicuous than any other disclosure. (Those terms need not be more conspicuous than the financial institution's identity.) (226.17(a)(2))
3.	<p>Determine the presence and accuracy of the following items in the TIL disclosure, as applicable:</p> <p><i>Refer to the Truth in Lending Calculation Program Appendix of this manual for verifying the accuracy of APR calculations.</i></p> <ul style="list-style-type: none">• The identity of the creditor making the disclosures (The creditor's name is sufficient; however, the address and telephone number can be included.) (226.18(a))• The "amount financed", using that term, and a brief description, such as "the amount of credit provided to you or on your behalf" <p>The amount financed should be compared to the principal amount on the note. The amount financed should be less than the principal amount if origination fees or other prepaid charges were charged, otherwise these amounts should be the same.</p>

**TRUTH IN
LENDING (TIL)
(cont'd)**

The amount financed is calculated by using the following procedures:

- Determine the principal loan amount or the cash price (subtracting any downpayment)
- Add any other amounts that are financed by the creditor and are not part of the finance charge
- Subtract any prepaid finance charge

(226.18(b))

- A separate, written itemization of the amount financed, except where a statement is included that the consumer has the right to receive a written itemization and the consumer has not indicated in a space provided that such an itemization is desired (226.18(c))
- The "finance charge", using that term, and a brief description, such as "the dollar amount the credit will cost you". The finance charge should include all finance charges outlined in Section 226.4 (226.18(d))
- The "annual percentage rate", using that term, and a brief description, such as "the cost of your credit as a yearly rate"

The APR should be within the allowable tolerance of 1/8 of 1% (0.125) for regular transactions and 1/4 of 1% (0.25) for irregular transactions (an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment)).

Refer to footnotes in Section 226.22 for more guidance (226.18(e)) and (226.22)

- If the APR may increase after consummation of a transaction not secured by the consumer's principal dwelling with a term of one year or less, the following disclosures are required:
 - The circumstances under which the rate may increase
 - Any limitations on the increase
 - The effect of an increase
 - An example of the payment terms that would result from an increase

(226.18(f)(1))

**TRUTH IN
LENDING (TIL)
(cont'd)**

- The number, amounts, and timing of payments scheduled to repay the obligation

The number of payments multiplied by the amount of payments should equal the total of payments. The examiner should verify the number, amounts, and timing of payments with the legal document (226.18(g))

- The "total of payments", using that term, and a descriptive explanation, such as "the amount you will have paid when you have made all scheduled payments"

NOTE: Both the number and amount of payments, as well as the finance charge plus the amount financed should equal total of payments. The total of payments may be omitted in a single-payment transaction; however, this exception does not apply to a transaction calling for a single payment of principal combined with periodic payments of interest.

(226.18(h))

- The fact that the obligation has a demand feature and that the disclosures are based on an assumed maturity of one year if no alternate maturity date is stated. This feature should only be utilized if the loan is truly made "on demand" for example the loan can be called at any time for any reason (226.18(i))

Refer to Regulation Z Staff Commentary.

- In a credit sale, the "total sale price", using that term, and a descriptive explanation (including the amount of any downpayment), such as "the total price of your purchase on credit, including your downpayment of \$ _____"

This is applicable to all dealer paper purchases as the transaction between the dealer, seller, and the buyer is a credit sale. (This could be applicable to a residential mortgage when it concerns financial institution-financed other real estate (ORE).) (226.18(j))

NOTE: The total sale price is the sum of the cash price, the finance charge and charges that are financed and not part of the finance charge. This disclosure is intended to allow a consumer to compare meaningfully the cost of buying on credit with a cash purchase price and must be made in addition to the disclosures required for direct loans.

**TRUTH IN
LENDING (TIL)
(cont'd)**

In a multiple creditor situation, if one of the creditors is the seller, the total sale price disclosure must be made even though the creditor providing the disclosures is not the seller.

- A statement indicating whether a penalty may be imposed if the obligation is prepaid in full when the obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance

If the obligation includes a precomputed finance charge, a statement indicating whether the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full. The prepayment penalty clause ideally should only be utilized on simple interest notes and the rebate clause should only be utilized on precomputed notes.

(226.18(k))

- Any dollar or percentage charge that may be imposed before maturity due to a late payment. This amount should be compared to what is specified in the note, to ensure the correct terms have been stated

(226.18(l))

- The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction or in other property identified by item or type

(226.18(m))

- To exclude certain insurance premiums from the finance charge the following conditions must be disclosed:
 - For premiums for credit life, accident, health, or loss-of-income insurance:
 - (i) That the insurance coverage is not required by the creditor.
 - (ii) The premium for the initial term of insurance coverage and if the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed.
 - (iii) That the consumer signed or initialed an affirmative written request for the insurance after receiving the disclosures specified above. Any consumer in the transaction may sign or initial the request.

These conditions can be contained within the credit insurance application form, as well as any other separate form.

**TRUTH IN
LENDING (TIL)
(cont'd)**

(226.4 (d))

- For premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property:
 - (i) That the insurance coverage may be obtained from a person of the consumer's choice.
 - (ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed.

(226.18(n) and 226.4(d))

- The disclosures required to exclude certain security interest charges from the finance charge

If itemized and disclosed, the following charges may be excluded from the finance charge:

- Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest
- The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described above that otherwise would be payable

(226.18(o))

- A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation and prepayment rebates and penalties. This statement can usually be found in small print at the bottom of the "Fed" box (226.18(p))
- If the financial institution requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit. This does not apply to deposits earning 5% or more per year (226.18(r))

HOME

The following procedures should be performed when a financial institution purchases dealer paper for one-to-four family mobile home purchases.

**MORTGAGE
DISCLOSURE
ACT (HMDA)**

Home Mortgage Disclosure (HMDA)

1. Determine whether the financial institution (and, if applicable, its majority-owned mortgage lending subsidiary) is subject to HMDA (Regulation C) according to the following criteria:
 - The financial institution had a home or branch office in a metropolitan statistical area (MSA) at the end of the previous calendar year
 - The financial institution had more than \$28 million in assets as of December 31, of the previous year
 - The financial institution originated at least one first-lien home purchase loan (other than temporary financing such as a construction loan), on a one-to-four family dwelling in the previous calendar year

NOTE: Originations include a refinancing of a home purchase loan.

- A for-profit mortgage lending institution (other than a bank or savings association) originated home purchase loans (including refinancings of home purchase loans) equal to or exceeding ten percent of its loan origination volume (dollars) in the preceding calendar year (203.2(e)(2))

The financial institution may be exempt from Regulation C requirements because of a similar state law. (203.3(b))

NOTE: When determining whether a financial institution is subject to HMDA, the examiner should remain cognizant of any counties which may have been added or deleted from an MSA, thus causing a financial institution to become a new HMDA reporter or no longer a HMDA reporter.

Refer to Financial Institution Letter #22-96, "A Guide to HMDA Reporting, Getting It Right!" dated 4/15/96. This can be a source of reference, as it lists counties in an MSA by state.

**HOME
MORTGAGE
DISCLOSURE
ACT (HMDA)
(cont'd)**

If the financial institution is subject to Regulation C based on the above criteria, perform the following procedures.

2. Determine whether purchased dealer paper of mobile homes which are primary residences have been accurately recorded on the HMDA LAR within 30 days after the end of the calendar quarter in which the paper was purchased.
3. Determine whether a financial institution participates in the credit decision involving the purchase of indirect paper from a dealer and that when the credit is denied, those transactions are recorded on the HMDA LAR within 30 days after the end of the calendar quarter in which the credit was denied.

**EQUAL CREDIT
OPPORTUNITY
ACT (ECOA)**

When a financial institution purchases indirect paper from a dealer in the regular course of business, and participates in the decision to extend credit, the financial institution must maintain procedures to determine whether the dealer is complying with the ECOA in all aspects of the credit transaction. (202.2(l))

Equal Credit Opportunity Act

1. If within 30 days the applicant accepts a credit offer from the financial institution, no further notification is required from either the financial institution or the dealer. If credit is not extended by the financial institution or the applicant does not accept the financial institution's offer of alternate terms, each creditor taking adverse action must notify the applicant. (202.9)
2. Determine that the following time frames, as applicable, are adhered to with regard to notifying applicants of action taken:
 - 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application
 - 30 days after taking adverse action on an incomplete application, unless notice of incompleteness is provided
 - 30 days after taking adverse action on an existing account; or

**EQUAL CREDIT
OPPORTUNITY
ACT (ECOA)
(cont'd)**

- 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered

(202.9(a)(1))

3. Determine that written notifications of action taken on applications contain:

- A statement of the action taken
- The name and address of the creditor
- A statement of the provisions of Section 701(a) of the Equal Credit Opportunity Act (the "ECOA Notice") (202.9(b)(1))
- The name and address of the appropriate FDIC Regional Office
- Either of the following:
 - (i) A statement of specific reasons for the action taken; *or*
 - (ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If reasons are provided orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(202.9(a)(2))

4. Determine the disclosure requirements of Section 202.9(a)(2) above regarding Section 701(a) of the Act are met by ensuring the financial institution provides a notice substantially similar to the following:

The Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

**EQUAL CREDIT
OPPORTUNITY
ACT (ECOA)
(cont'd)**

The federal agency that administers compliance with this law concerning this creditor is (name and address of the regulatory agency responsible for ensuring compliance).

(202.9(b)(1))

5. Determine the statement of specific reasons required by Section 202.9(a)(2) are specific and indicate the principal reason(s) for the adverse action.

NOTE: Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

6. Determine that within 30 days after receiving an incomplete application regarding matters that an applicant can complete, the creditor shall notify the applicant of either:

- Action taken, in accordance with Section 202.9(a); or
- Incompleteness in accordance with the following:

If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with Section 202.9(a)(1) and 202.9(a)(2).

- At its option, a creditor may inform the applicant orally of the need for additional information; but if the application remains incomplete the creditor shall send a notice in accordance with Section 202.9(c)(1)

(202.9(b)(2))

**EQUAL CREDIT
OPPORTUNITY
ACT (ECOA)
(cont'd)**

7. Refer to the Applications Not Originated section of this manual for procedures regarding:

- Oral notifications by small volume creditors
- Withdrawals of approved applications
- Multiple applicants
- Applications submitted through a third party

NOTE: If a dealer attempts unsuccessfully to obtain financing at several financial institutions or the applicant does not accept any alternate terms offered, all the financial institutions and any dealer acting as a creditor in the transaction must give the notices required for adverse action. A financial institution may enter into contractual arrangements with dealers to provide all appropriate notices. If the dealer provides a joint notification, the financial institution will not be liable for actions or omissions resulting in violations if it provided the dealer with the information necessary to comply with the notification requirements and was maintaining procedures reasonably adapted to avoid any such violation. Any joint notification must identify each creditor.

**CREDIT
PRACTICES
RULE**

Credit Practices Rule

1. Review the documents evidencing the credit obligation for the required notice to cosigners.
 - If the notice to cosigners is contained in the note or disclosure, it must be clear, conspicuous, and substantially similar to that provided in the regulation and must be provided before the cosigner becomes obligated (227.14)
 - If the notice to cosigners is contained in a separate document:
 - Interview applicable employees to determine if they are aware that the notice must be provided prior to the cosigners becoming obligated
 - Review the financial institution's policies, procedures, and practices to ensure that staff members are aware that cosigners must be provided with the notice prior to becoming obligated

**CREDIT
PRACTICES
RULE
(cont'd)**

2. Determine that the following prohibited contract provisions are not included in contracts (or related documents) originated, or enforced in contracts acquired by the financial institution:

- Confession of judgment
- Waiver of statutory property exemption
- Assignment of wages
- Blanket security interest in household goods

(227.13)

NOTE: Security interests may be taken on credit sale transactions for household goods without the financial institution taking possession of the goods.

**FAIR CREDIT
REPORTING
ACT (FCRA)**

Fair Credit Reporting Act

1. Ensure that any credit reports used in making a credit decision were requested and used only as permissible and specified in the Fair Credit Reporting Act and for no other purposes. (607)

NOTE: Whenever an institution, because of information from an outside source, denies or increases the cost of credit requested by a merchant to be extended directly or indirectly to a consumer, the institution must make to the consumer the disclosures required of a user. However, the merchant must have advised the consumer of the name and address of the institution before contacting the institution so as to prevent the institution from becoming a consumer reporting agency.

**PRESERVA-
TION OF
CONSUMERS'
CLAIMS AND
DEFENSES
(PCCD)**

Preservation of Consumers' Claims and Defenses

1. Review any blank note forms furnished to dealers by the financial institution. Determine if the required notice below is included as part of the contract:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

(432.2(a))

2. Review at least one note from each dealer from which the financial institution has purchased indirect paper since the previous compliance examination. Determine whether the contracts contain the following required notice without conflict with other contractual provisions:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

(432.2(b))

NOTE: The Rule imposes no requirement with respect to the location of the required notice within the text of a consumer contract. It may appear anywhere. The Rule is satisfied so long as the notice is clearly a part of the contract and any remaining provisions of the contract do not contradict and are not otherwise inconsistent with the terms of the notice.

**PRESERVA-
TION OF
CONSUMERS'
CLAIMS AND
DEFENSES
(PCCD)
(cont'd)**

3. Review relationships with dealers to determine if the financial institution is making "purchase money loans" as defined in the Rule: A purchase money loan is a cash advance which is received by a consumer in return for a "Finance Charge" with the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement.
4. Review purchase money loans made since the previous compliance examination to determine whether the contracts contain the required notice without conflict with other contractual provisions.

**WORKPAPER
STANDARDS**

Appropriate Workpapers must be completed when reviewing compliance with loan regulations. Refer to Standardized Workpapers, Appendix K, in this manual.



**FDIC LAW,
REGULATIONS,
& RELATED
ACTS**

Applicable Rules

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**Advisory
Opinions**

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**Statements of
Policy**

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**DCA
MEMORANDA**

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.

**FINANCIAL
INSTITUTION
LETTERS (FIL)**

See the Reference area for Examination Procedures, Approved Loans, Closed-End Credit elsewhere in Part III.
